

1944



File No. Irrig Crop Reg

Legal Dept

44

B BRANCH

Subject:— Rules and Notifications

under the Bombay - Irrigation Act

Regulation Act 1944

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486-13

Office of the P.L.A.

These papers are sent to the P.L.A. for scrutiny of the draft rules at pp. 41-44 ante. In para. 3 of his note dated 12-7-1944 at pp. 40-40B ante, Secretary, P.L.A. proposes to delete rules 6, 7, 8 and 10 from the draft rules at pp. 41-44 ante. He has, however on the suggestion of A(R) retained rule 7 as amended by him in pencil. The rules which therefore require to be scrutinized by the P.L.A. are rules 1, 2, 3, 4, 5, 7, 9 and 11.

2. A revised draft notification is sent herewith. R.D. is requested to verify if the draft rule suits its purpose.

3. (1) For the reasons stated below there remains only one rule and therefore it is not necessary to give any title to the rule and or to define any terms therein. The question raised in para 1 of Secretary, R.D.'s note at p. 31 ante as to defining the term "Commissioner" in the rules does not therefore survive. In view of section 3(13) of the Bombay General Clauses Act, 1904, it is also not necessary to define the term in the Act. Rules 1 and 2 are therefore omitted from the revised draft.

(11) P.L. draft rules 3 and 11. - The first part of P.L. rule 3 gives power to the canal officer or any other officer directed by the Commissioner to prepare a scheme for any particular area, to summon and examine owners of any land included in the scheme. There is no provision in the Act (in this note the Bombay Irrigated Crop Regulation Bill is referred to as the Act) under which the canal officer or the officer directed by the Commissioner to prepare a scheme can exercise such power. This part of the rule is therefore outside the scope of the Act. The next part of the rule gives the specified officer the power to determine an alignment of such new water courses as he considers necessary for implementing the scheme. Rule 11 requires the officer to exhibit a list of survey numbers through which the new water courses shall pass. The rule further provides that the construction of the water course shall be deemed to be necessary for carrying out the scheme within the meaning of section 10 of the Act. Under section 2 'irrigation work' is defined as meaning 'a canal' as defined in the Bombay Irrigation Act, 1879, in respect of the use of water

from which a rate is leviable under the said Act. The Bombay Irrigation Act, 1879, defines a 'canal' as including a water course. Under section 4 a scheme prepared under the Act has to specify among ~~the~~ other things the name of the Irrigation work. It assumes the existence of ~~the~~ work. The Bombay Irrigated Crop Regulation Act does not provide for the construction of irrigation works. Construction of new water courses and irrigation works is provided for by the Bombay Land Improvement Schemes Act, 1942, and as far as P.L.A. recollects, the aspect of irrigation was deliberately eschewed from the Bombay Irrigated Crop Regulation Act. Although, therefore, section 10 of the latter Act gives power to any person authorised by the Commissioner to do all acts necessary for the purpose of carrying out any scheme, that section would not empower the authorised person to construct new water courses. Rules 3 and 11 are accordingly omitted from the revised draft notification.

(iii) R.D. draft rules 4 and 9. - Rule 4 provides for publication of the scheme at the village chauri and the Taluka or Mahal offices concerned. This provision would appear to be unnecessary in view of sub-section (1) of section 6 of the Act. The latter part of the R.D. draft rule 4 and P.D. draft rule 5 provides for the service of the notice of the scheme on each owner of the land included in the scheme. These provisions would be inconsistent with section 7 which requires only a ~~owner of the land included in the scheme.~~ These provisions ~~would be inconsistent with section 7 which requires only a~~ general notice, to be given in the prescribed manner to all the owners of the lands. The revised rule therefore prescribes the manner in which the general notice under section 7 shall be given. In view of the avoidance of personal service of notice and having regard to the definition of ('owner' in section 2 (3), P.L. draft rule 9 is unnecessary and so omitted.

(iv) P.D. draft rule 7. - This rule, as amended in pencil by Secretary, P.D., requires the owner to make an application for the supply of canal water at least one month before the date before which water shall begin to be taken from the

irrigation work specified in the scheme, but under clause (b) of section 7 the owners of the lands included in the scheme have to begin to take water in accordance with the procedure laid down in the Bombay Irrigation Act, 1879, and the rules made thereunder. Section 27, of the Bombay Irrigation Act, requires every person desiring to have a supply of water from a canal to submit a written application to that effect to a canal officer duly empowered to receive such applications, in such form as may from time to time be prescribed by the Provincial Government. Rule 4 of the Bombay Canal Rules, 1934, prescribes how application under section 27 of the Irrigation Act shall be made. Rule 5 of those rules fixes the dates for the submission of such applications. Since section 7 of the Bombay Irrigation Act, 1879, and the rules made thereunder, the owners shall have to follow the procedure as laid down therein and no rule prescribing procedure for the submission of applications for supply of water can be made under the Bombay Irrigated Crop Regulation Act, 1944. B.D. draft rule 7 has therefore been omitted from the revised draft notification.

(v) The form of notice has been recast in accordance with the provisions of section 7. Since the section requires a general notice to be given the note at the end of the form has been omitted.

Id/-

P.N.H.

10/8/44.

Remembrancer of Legal Affairs.

U.R. to B.D. , No. 5674, dated 11th August 1944.

L.V.D.
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C.

* Crop Regulation Act. requires the owners of lands to take water in accordance with the procedure laid down in the Bombay Irrigation,

NOTIFICATION.

Revenue Department,
Bombay Castle, 1944.

No. 9560/39.- The following draft of a notification which it is proposed to issue under ~~xxxxx~~ section 13 of the Bombay Irrigated Crop Regulation Act, 1944 (Bom. of 1944), is published as required by sub-section (3) of the said section 13 ~~xxxxx~~ for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay or or after.

2. Any objection or suggestion which may be received by the Secretary to the Government of Bombay in the Revenue Department from any person with respect to the said draft on or before the ~~xxxxxx~~ aforesaid date will be considered by Government.

DRAFT NOTIFICATION.

No. In exercise of the powers conferred by section 13 of the Bombay Irrigated Crop Regulation Act, 1944 (Bom. of 1944), the Government of Bombay is pleased to make the following rule, namely:-

The general notice under section 7 shall be in the form appended to this rule; it shall be given by affixing copies thereof in the chavdi or some other public buildings in each village affected by the scheme, and in the office of the Mamlatdar or Mahalkari of the Taluka or Mahal in which the village is situated.

Form of Notice under section 7.

Notice is hereby given to all the owners of the land included in the scheme sanctioned under section 5 and published in accordance with the provisions of section 6 of the Bombay Irrigated Crop Regulation Act, 1944, in so far as the scheme affects Village in taluka of the district.....

(1) that the following survey numbers in the village have been decided as comprising the lands under command of the irrigation work specified opposite them namely:-

that all owners of the lands specified above are hereby directed to begin to take water before

** Here specify the date appointed and. or section 4.

**..... for irrigating the lands from the irrigation work concerned in accordance with the procedure laid down in the Bombay Irrigation Act, 1879, and the rules made thereunder:

(3) that crops other than schedule crops may be grown in the following survey numbers, namely:-

* Here specify survey numbers

and

(4) that all owners shall before the day of ..
.....194..... sow the schedule crops in the following survey numbers namely:-

** Here specify the date appoint. in the scheme under section 4(vii) of the Act.

*** Here specify survey numbers.

Note:- The following are the scheduled crops.

* Here specify scheduled crops

Signature of officer who prepared the scheme.

By order of the Governor of Bombay.

Secretary to Government.

N.V. D.
14/7
48.

Bombay Irrigated Crop Regulation Act.
Orders under section 8 of-

Government of Bombay.
Revenue Department.
Circular No. 9563/39.
Bombay Castle, 14th October 1944.

Circular of Government.

Doubts have been raised regarding the including co-operative societies as regards their interest in lands which might come to be forfeited under section 8 of the Bombay Irrigation Crop Regulation Act (Bom. XII of 1944). In order to allay the apprehensions of the creditors Government is pleased to direct that should it be necessary at any time to forfeit lands for non-compliance with the provisions of the Act, and dispose of them for cultivation in accordance with the scheme, the co-operative societies and Banks and other creditors should have the first refusal so far as lands on which their debts are secured are concerned.

2. The forfeited lands are to be restored to the original holders when no scheme is contemplated under the Act or when the defaulter gives an undertaking to cultivate the lands in accordance with the scheme in force at any time. Government is pleased to direct that the Commissioner should, in such cases, restore the lands subject to all previous encumbrances so that the rights of creditors, including co-operative societies, should not be affected and also impose a condition regarding payment by the defaulter of the value of the improvements, if any, made either by Government or by a cultivator put in by Government to the party concerned.

By order of the Governor of Bombay,

sd/- H. J. Desai,

Secretary to Government.

To

The Commissioners of Divisions,
The Settlement Commissioner and Director of Land
Records,
All Collectors,
All Superintending Engineers,
The Director of Agriculture,
The Registrar of Co-operative Societies and
Director of Rural Development,
The Remembrancer of Legal Affairs,
The Finance Department,
The Public Works Department.

No. of 944.

Copy forwarded for information and guidance to

N.V.L.
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S.H.
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